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Supreme Court, U.S.
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No. 99-5525

In The
SUPREME COURT OF THE UNITED STATES

CHARLES THOMAS DICKERSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the
Fourth Circuit Court of Appeals

BRIEF *AMICUS CURIAE* OF THE RUTHERFORD INSTITUTE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED FOR REVIEW

1. Whether the passage of 18 U.S.C. § 3501 was an unconstitutional attempt by Congress to legislatively overrule the Supreme Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966)?

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

STATEMENT OF *AMICUS CURIAE* INTEREST AND INTRODUCTION[1]

The Rutherford Institute is an international, non-profit civil liberties organization with offices in Charlottesville, Virginia and internationally. The Institute, founded in 1982 by its President, John W. Whitehead, educates and litigates on behalf of constitutional and civil liberties. Attorneys affiliated with the Institute have filed petitions for writ of *certiorari* in the United States Supreme Court in more than two dozen cases, and *certiorari* has been accepted in two seminal First Amendment cases; *Frazee v. Dept. of Employment Sec.*, 489 U.S. 829 (1989) and *Arkansas Educational Television Comm'n. v. Forbes*, 523 U.S. 666 (1998). Institute attorneys have filed over three dozen *amicus curiae* briefs in the United States Supreme Court, including recent criminal justice cases namely, *Wyoming v. Houghton*, 526 U.S. 295 (1999), *Slack v. McDaniel*, 119 S.Ct. 1025 (cert. granted), Sup.Ct. No. 98–6322 (October Term 1998), and *Illinois v. Wardlow*, 119 S.Ct. 1573 (cert. granted), Sup. Ct. No. 98-1036 (January 12, 2000), as well as a multitude of *amicus curiae* briefs in the federal and state courts of appeals. Institute attorneys currently handle several hundred cases nationally, including numerous fourth Amendment cases. The Institute has published

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1 *Amicus curiae* The Rutherford Institute files this brief with the consent of counsel for both parties. Copies of letters of consent from the parties' counsel are on file with the Clerk of the Court. Counsel for The Rutherford Institute authored this brief in its entirety. No person or entity, other than the Institute, its supporters, or its counsel, made a monetary contribution to the preparation or submission of this brief.

educational materials and taught continuing legal education classes in this area as well.

In this particular case, the status of the Miranda Doctrine is a deeply ingrained criminal defense tool. It ought not to be discarded, if at all, without at least a full scrutiny of its origins, the purpose it serves, and the relationship between this Court, the Congress, and the limitations placed on Congressional power both in the Bill of Rights and Section 5 of the 14th Amendment. With its depth and breadth of knowledge on this subject, The Rutherford Institute believes that the accompanying brief addresses areas related to the issues raised which this Court should consider in reaching its decision.

SUMMARY OF ARGUMENT

Congress enacted 18 U.S.C. § 3501 in direct response to this Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966) with the clear intent of restoring voluntariness as the test for admitting confessions in federal court. However, under our Constitution, the Federal Government is one of the enumerated powers. The judicial authority to determine the constitutionality of laws, in cases and controversies, is based on the premise that the "powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." Congress' power under §5 of the 14th Amendment, however, extends only to "enforc[ing]" the provisions of the Bill of Rights. This Court has described this power as "remedial." The design of the Amendment and the text of §5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Bill of Right's restrictions. Legislation, which alters the meaning of the Bill of Rights, cannot be said to be enforcing it. Congress does not enforce a constitutional right by changing what the right is. It has been

given the power "to enforce," not the power to determine what constitutes a constitutional violation. Here, Congress has attempted to redefine the rights of an accused under the 5th Amendment and 6th Amendment. This is neither remedial nor is it enforcement of a right, but rather, it is a determination of the rights of the accused. This determination is the exclusive domain of this Court. *E.g., Boerne v. P.F. Flores*, 521 U.S. 511 (1997).

The Miranda Doctrine is an imbedded criminal defense doctrine whose roots are found in the *Magna Carta* of 1215. This Court has stricken statements of the accused, long before *Miranda*, on a mere showing that there was no corroborating evidence that the defendant gave the statement. *Miranda* serves as a prophylactic reminder to the accused that he has rights, but also to the officers involved that there are limitations on what may be done with, or to, the accused. Moreover, this prophylactic serves to protect the important 6th Amendment right to public trial in that it assures the public that the accused is treated fairly at a trial, if that is the accused's choice, and not condemned in a "star chamber" proceeding. The rationale of this Court always has been, and always should be, "better to allow a guilty person go free rather than risk convicting an innocent person on tainted evidence."

For the foregoing reasons, the court should reverse the 4th Circuit on its ruling that "Congress, pursuant to its power to establish the rules of evidence and procedure in the federal courts, acted well within its authority in enacting 18 U.S.C. § 3501, and hence, rather than *Miranda* governs the admissibility of confessions in federal court." Opinion at 166 F.3d 667.

ARGUMENT

I. CONGRESS HAS BEEN GIVEN THE POWER "TO ENFORCE," NOT THE POWER "TO DETERMINE" WHAT CONSTITUTES A CONSTITUTIONAL VIOLATION

Congress enacted 18 U.S.C., § 3501 in direct response to this Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966) with the clear intent of restoring voluntariness as the test for admitting confessions in federal court. Opinion below, 166 F.3d at 667, 685-86 (1999), *citing* Stephen A. Saltzburg & Daniel J. Capra, *American Criminal Procedure* 545 (5th ed. 1996). Assuming, *arguendo*, that was Congress' intent, Congress crossed the line and did that which it may not do. *E.g., Boerne v. P.F. Flores*, 521 U.S. 511 (1997).

Under our Constitution, the Federal Government is one of enumerated powers. *McCulloch* v. *Maryland*, 4 Wheat. 316, 405 (1819); see also The Federalist No. 45, p. 292 (C. Rossiter ed. 1961) (J. Madison). The judicial authority to determine the constitutionality of laws, in cases and controversies, is based on the premise that the "powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 176 (1803). *E.g., Boerne v. P.F. Flores*, 521 U.S. 511, 515 (1997).[2]

Whether the Congress relied on its powers under the "necessary and proper" clause or on the 14th Amendment in passing § 3501 is not at all clear. Opinion below, 116 F.3d 667,

[2] The scope of protection afforded by the Bill of Rights is the same, whether asserted against state officials or federal officials.

687-88. The Fourteenth Amendment provides,[3] in relevant part:

> "Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The parties disagree over whether § 3501 is a proper exercise of Congress' power to legislate. There are two sources which, arguably, support Congressional authority, to wit § 5 of the 14th Amendment "to enforce" by "appropriate legislation" the constitutional guarantee that no State shall deprive any person of "life, liberty, or property, without due process of law" nor deny any person "equal protection of the laws." The other would be Art. I, § 8, clause 18, the so-called "necessary and proper" clause.[4] The court of appeals did not even address this

[3] While the 14th Amendment appears to be directed at the several states, it does not negate the right of Congress to enforce the Bill of Rights as against the federal government. *E.g., Bivens v. Six Unknown Agents of the FBI, 403 U.S. 388 (1971); Butz v. Economou*, 438 U.S. 478 (1975) (abolishing distinctions in liability for federal government employees acting under color of law and state employees acting under color of law); *Bolling v. Sharpe*, 347 U.S. 497 (1954) (recognizing an "equal protection" element to the "due process" clause of the 5th Amendment).

[4] Art. I, § 8, clause 9 grants Congress the power "to constitute tribunals inferior to the Supreme Court". Clause 18 grants authority "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Art. III, § 1 provides, "The judicial Power of the United States, shall be vested in one supreme Court, and **in such inferior Courts as the Congress may from time to time ordain and establish**." (Emphasis added.) Art. III, § 2 clause 2 states, "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before

issue, finding only that Congress had the power, without specifying where in the Constitution the power is created. Opinion below, 166 F.3d, at 687-88. The court of appeals looked only to see if the rule were constitutionally required. *Id.* At this juncture, for the sake of clarity and continuity, the Court's *amicus* will assume that the rule is constitutionally required for the sake of discussing whether, if so, Congress can overrule *Miranda*. In a subsequent section, the Court's *amicus* will discuss *Miranda* and whether it is constitutionally mandated.

All must acknowledge that both Art. I, § 8, clause 18 and §5 of the 14th Amendment are "a positive grant of legislative power" to Congress, *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 (1966); *Wayman v. Southhard*, 23 U.S. (10 Wheat.) 1 (1825). In *Ex parte Virginia*, 100 U.S. 339 (1880) and *Boerne v. P.F. Flores*, 521 U.S. at 517, this court explained the scope of Congress' §5 power in the following broad terms:

> "Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against ... denial or invasion, if not prohibited, is brought within the domain of congressional power."

100 U.S. at 345-46.

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mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, **with such Exceptions, and under such Regulations as the Congress shall make."** (Emphasis added.)

Legislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if, in the process, it prohibits conduct which is not itself unconstitutional and intrudes into "legislative spheres of autonomy previously reserved to the States." *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 455 (1976). For example, the Court upheld a suspension of literacy tests and similar voting requirements under Congress' parallel power to enforce the provisions of the Fifteenth Amendment, see U.S. Const., Amend. 15, §2, as a measure to combat racial discrimination in voting, *South Carolina* v. *Katzenbach*, 383 U.S. 301, 308 (1966), despite the facial constitutionality of the tests under *Lassiter* v. *Northampton County Bd. of Elections*, 360 U.S. 45 (1959). This court has also concluded that other measures protecting voting rights are within Congress' power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures placed on the States. *South Carolina* v. *Katzenbach*, *Op.Cit.* (upholding several provisions of the Voting Rights Act of 1965); *Katzenbach* v. *Morgan*, *Op.Cit.* (upholding ban on literacy tests that prohibited certain people schooled in Puerto Rico from voting); *Oregon* v. *Mitchell*, 400 U.S. 112 (1970) (upholding 5-year nationwide ban on literacy tests and similar voting requirements for registering to vote); *City of Rome v. United States*, 446 U.S. 156, 161 (1980) (upholding 7-year extension of the Voting Rights Act's requirement that certain jurisdictions preclear any change to a " 'standard, practice, or procedure with respect to voting' "); *see also James Everard's Breweries* v. *Day*, 265 U.S. 545 (1924) (upholding ban on medical prescription of intoxicating malt liquors as appropriate to enforce Eighteenth Amendment ban on manufacture, sale, or transportation of intoxicating liquors for beverage purposes).

It is also true, however, that "[a]s broad as the

congressional enforcement power is, it is not unlimited." *Oregon* v. *Mitchell*, 400 U.S. at 128 (opinion of Black, J.); *Boerne v. P.F. Flores*, 521 U.S. at 518 (Opinion by Kennedy, J.). In assessing the breadth of §5's enforcement power,[5] we begin with its text. Congress has been given the power "to enforce" the "provisions of this article." We agree with Respondent, of course, that Congress can enact provisions under §5, enforcing the constitutional rights of persons before the court, including the accused. The "provisions of this article," to which §5 refers, include the Due Process Clause of the Fourteenth Amendment. Congress' power to enforce the various provisions of the Bill of Rights and control the judicial business follows from this Courts' holding in *Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940), *Boerne v. P.F. Flores*, 521 U.S. at 518-19, and *Wayman v. Southhard*, 23 U.S. (10 Eat.) 1 (1825).

Congress' power under §5, however, extends only to "enforc[ing]" the provisions of the Bill of Rights. The Court has described this power as "remedial,"*Katzenbach*, 383 U.S. at 326. The design of the Amendment and the text of §5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Bill of Rights' restriction. Legislation which alters the meaning of any provision of the Bill of Rights cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing what the right is. It has been given the power "to enforce," not the power to determine what is or is not a constitutional violation. Were it not so, what Congress would be enforcing would no longer be,

[5] It would appear that if § 3501 can pass § 5 scrutiny, it can also pass the "necessary and proper" clause scrutiny as well. On the other hand, if Congress has transgressed the 5th and 6th Amendments, then the law is not "necessary and proper," therefore failing that test as well.

in any meaningful sense, the "provisions of [the Bill of Rights.]" *See Boerne v. P.F. Flores*, 521 U.S. at 519, and *Wayman v. Southhard*, *supra*.

While the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies, the distinction exists and must be observed. There must be a congruence and proportionality between the injury to be prevented or remedied and the means adapted to that end. Lacking such a connection, legislation may become substantive in operation and effect. History and our case law support drawing the distinction, one apparent from the text of the Amendment. *E.g., Boerne v. P.F. Flores*, 521 U.S. at 519-20, and *Wayman v. Southhard*, *supra*.

If Congress could define its own powers by altering the Bill of Right's meaning, the Constitution would no longer be "superior paramount law, unchangeable by ordinary means." It would be "on a level with ordinary legislative acts, and, like other acts, ... alterable when the legislature shall please to alter it." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) at 177. Under this approach, it is difficult to conceive of a principle that would limit congressional power. Shifting legislative majorities could change the Constitution and effectively circumvent the difficult and detailed amendment process contained in Article V. *See generally, Boerne v. P.F. Flores*, 521 U.S. at 529.

We now consider whether § 3501 can be considered enforcement legislation under §5 of the Fourteenth Amendment.

II. *MIRANDA* SERVES AS A TIME-TESTED, VENERABLE AND IMPORTANT PROPHYLACTIC PROTECTING AN ACCUSED'S 5TH AMENDMENT

RIGHT TO REMAIN SILENT AND 6TH AMENDMENT RIGHT TO PUBLIC TRIAL

The *Magna Carta* has always been regarded as the antecedent of our own Bill of Rights and looked to for meaning regarding the Bill of Rights and its intended protections. *See generally*, Schwartz, *The Bill of Rights; A Documentary History* (1971); 1 Rotunda, *Treatise on Constitutional Law* (Vol. 1) § 3.1, note 4; *id.* at § 20.53; Barrett, et al, *Constitutional Law, Cases and Materials* (University Casebook Series, 4th ed., 1973), p. 591; *Murrays' Lessee v. Hoboken Land & Improvement*, 59 U.S. (18 How.) 272 (1856); *Duncan v. Louisiana*, 391 U.S. 145 (1968); *Davidson v. New Orleans*, 96 U.S. 97 (1878).

The *Miranda Doctrine* is an imbedded criminal defense doctrine whose roots are found in the *Magna Carta* of 1215. At common law, "No bailiff for the future shall, upon his own unsupported complaint, put anyone to his 'law,' without credible witnesses brought for this purpose."[6] *Magna Carta*,

[6] At common law it was also true that the accused was required to conduct his own defense since he was neither allowed to call witnesses in his behalf nor permitted the assistance of counsel. *See generally*, *Ferguson v. Georgia*, 365 U.S. 570, 573-74 (1961); 1 Stephen, *History of the Criminal Law of England*, p. 350. In the 17th Century, the accused could call witnesses by statute, but could not testify. The general rationale was the defendant was an interested party and therefore disqualified. *Ibid.* This disqualification carried over to this country at its founding. Maine was the first state, in 1859, to discard the common law and allow interested parties to testify under oath in civil cases. The chief argument against the practice in criminal courts was perceived as how to protect the defendant's right to remain silent. Eventually, by 1961, the sole state left which disqualified criminal defendants from testifying was Georgia. *Ferguson, Op. Cit.* at 575-77.

Article 38; McKechnie,[7] *MAGNA CARTA*; A COMMENTARY ON THE GREAT CHARTER OF KING JOHN. In American jurisprudence, corroboration by extrinsic evidence has been the rule, rather than the exception. *Cf. Spinelli v. United States*, 394 U.S. 410 (1969) (corroboration existed); *Illinois v. Gates*, 462 U.S. 213 (1983) (extrinsic evidence based upon totality of circumstances)[8] with *Aguilar v. Texas*, 378 U.S. 108 (1964) (corroboration lacking); *Wong Sun v. United States*, 371 U.S. 471, 488-489 (1963) (extrinsic corroboration lacking); also, *Opper v. United States*, 348 U.S. 84 (1954). In the past and currently, the requirement for extrinsic corroboration was designed for the protection of persons from the abuses of government. McKechnie, The *Magna Carta*, pp. 370-377; 3 Rotunda (Vol.3) § 23.20.[9] In following *Wong Sun, supra*,

[7] McKechnie is the recognized scholar on the original *Magna Carta*. 10 Halsbury's Statutes of England (4th ed.) (Vol. 10), Constitutional Law, 25 Edw. 1 (*Magna Carta*)(1297), Notes ¶ 3.

[8] *Gates* did not overrule *Spinelli* or *Aguilar* as to extrinsic corroboration; rather it shifts the focus to demand the magistrate look to the totality of circumstances known to the officers to determine whether or not probable cause existed. In fact, the shift was not even required. On the facts of *Gates*, the officers themselves had corroborated what the informer said; and of course the informer was the extrinsic corroboration of the officers conduct, so there was cross corroboration. Looking to the totality of circumstances in that case, the officers had at least sufficient information for a detention. But they had insufficient information for a full-blown search because of the vagueness of the vehicle description, a total absence of a description of the suspects, and nothing in plain view. *Compare n.* 10 below.

[9] "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can be obviated by

which had itself struck Defendant's statement for lack of extrinsic corroboration, federal courts have consistently followed the rule. *E.g., United States v. Felix-Jerez*, 667 F.2d 1297, 1299-1300 (9th Cir. 1982).

Aside from the voluntariness of a confession, the courts have always held that criminal confessions and admissions of guilt require extrinsic corroboration. *Wong Sun v. United States,* 371 U.S. at 488-489; *United States v. Felix-Jerez,* 667 F.2d at 1299-1300. Against this backdrop, this Court adopted two theories for dealing with confessions. *See Escobedo v. Illinois,* 378 U.S. 478 (1964); *Miranda v. Arizona,* 384 U.S. 436 (1966). A confession may not be used in the prosecution's case in chief where the confession was taken without giving the defendant notice of his rights because, without such notice, involuntariness was presumed. *Miranda v. Arizona,* 384 U.S. 436 (statement taken in violation of 5th Amendment right to remain silent); *Michigan v. Jackson*, 475 U.S. 625 (1986)(statement taken in violation of 6th Amendment right to counsel). However, statements taken in violation of *Miranda* may be used for impeachment purposes. *Walder v. United States,* 347 U.S. 64 (1954) (violation of 5th Amendment); *Michigan v. Harvey,* 494 U.S. 344 (1990) (violation of 6th Amendment). Such evidence may also be admitted if reliable and probative evidence would further the truth-seeking function and if the likelihood that admission of such illegally obtained

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adhering to the rule that constitutional provisions for security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to a gradual depreciation of the right, as if it consisted more in sound than in substance." *Boyd v. United States,* 116 U.S. 616, 635 (1886)(Harlan, J.), overruled on other grounds. *See Warden v. Hayden*, 387 U.S. 294 (1967) (hot pursuit & exigent circumstance exception; mere evidence rule).

evidence would encourage police misconduct is only a "speculative possibility." *Harris v. New York*, 401 U.S. 222, 225 (1971).[10] Prosecutors may use such statements to impeach answers elicited on cross-examination of matters clearly within the scope of direct examination. *Harris, supra.* However, illegally obtained statements from the defendant may not be used to impeach other defense witnesses. *James v. Illinois,* 493 U.S. 307 (1990). An involuntary statement cannot be admitted for any purpose. *Mincey v. Arizona,* 437 U.S. 385, 397-98 (1978); *Brown v. Mississippi*, 297 U.S. 278 (1936). Thus, *Miranda* itself has never been an absolute bar, but only a bar for use in the prosecutor's case in chief.

While the Fifth Amendment guarantees the accused the right to remain silent, *Miranda v. Arizona, supra*, and the Sixth Amendment guarantees the accused the right to a public trial, *United States v. Henry,* 447 U.S. 264 (1980); *United States v. Cianfrani,* 573 F.2d 835 (3d. Cir. Pa. 1978), their function is to operate as an effective restraint on possible abuses of the judicial system. *Id.* at 847. The requirement is recognized as "for the benefit of the accused, that public may see that accused is fairly dealt with and not unjustly condemned, and that presence of interested spectators" (e.g. counsel) "may keep his triers keenly alive to sense of their responsibilities and to the importance of their functions." *People v. Terry,* 99 Cal.App.2d 579, 584, 222 P.2d 95, 99 (1950); *In re Oliver,* 333 U.S. 257

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[10] It is here suggested that the approach suggested in *Harris v. New York* should be followed: *i.e.*, where the officers acted in good faith in violation of *Miranda*, or where they ignored *Miranda* to deprive the accused of the chance to testify, such evidence should not be admissible for impeachment purposes if (1) there is bad faith, (2) the evidence is of questionable probative value, and (3) there is no extrinsic corroboration: (a) that the defendant in fact made the statement; or (b) of the contents.

(1948); *Screws v. United States,* 325 U.S. 91 (1945); (pre-trial detainee beaten to death); *United States v. Price,* 383 U.S. 787 (1966) (certified judgments indicated that deputy sheriff was subsequently convicted of murdering the pre-trial detainees/civil rights workers); *Franks v. Delaware,* 438 U.S. 154 (1978); are but a few of legions of examples of what may transpire outside the presence of counsel. These cases point out the difficulty inherent in proving improper conduct hidden away from public scrutiny or the watchful eyes of diligent counsel, and witness the need to erect barriers to prevent abuse of pre-trial detainees. What have we gained if we have abolished the "star chamber" in a building, only to erect it on our highways and byways, away from any scrutiny whatsoever? Nothing. We have lost the essence of liberty that a person make a knowing, intelligent, and voluntary choice. The Court should adopt the reasoning in *Bivens v. Six Unknown Agents of the FBI,* 403 U.S. 388 (1971) that there must be an effective deterrent to police abuse by arresting and interrogating officers, and that the best deterrence is the reading of *Miranda* rights as a constant reminder to peace officers of their responsibility to uphold the law, but not to abuse it.

Moreover, this prophylactic serves to protect an important 6th Amendment right to public trial in that it assures the public that the accused is treated fairly at a trial, if that is the accused's choice, and not condemned in a "star chamber" proceeding. The rationale of this court has always been, and should always be, that is it is better to allow a guilty person to go free rather than chance convicting an innocent person on tainted evidence.

It is clear that, under the 5th Amendment, an accused cannot be compelled to testify against himself. The amendment is silent as to the issue of voluntariness. It is also clear that, from time immemorial, the bailiff (*i.e.* peace officers) could not, without corroboration, present evidence against the defendant

by putting words into the defendant's mouth. In order to prevent the "star chamber" from becoming our courts, thereby destroying the effectiveness of the adversary system, the *Miranda* warning is a constitutionally compelled and necessary process that strikes the appropriate balance by preventing use of alleged statements by an accused, unless the defendant willingly, in public, waives his right to remain silent in order to take the stand. Therefore, Congress overstepped its powers.

Our national experience teaches that the Constitution is best preserved when each part of the government respects both the Constitution and the proper actions and determinations of the other branches. When the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). When the political branches of the government act against the background of a judicial interpretation of the Constitution already issued, it must be understood that, in later cases and controversies, the Court will treat its precedents with the respect due them under settled principles, including *stare decisis*, and contrary expectations must be disappointed. § 3501 was designed to control cases and controversies, such as the one before us; but as the provisions of the federal statute here invoked are beyond congressional authority, it is this Court's precedent, not § 3501, which must control.

It is for Congress in the first instance to "determin[e] whether and what legislation is needed to secure the guarantees of the Bill of Rights," and its conclusions are entitled to much deference. *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966). Congress' discretion is not unlimited, however, and the courts retain the power, as they have since *Marbury v. Madison*, *supra*. to determine if Congress has exceeded its authority under the Constitution. Broad as the power of Congress is under the

Enforcement Clause of the Fourteenth Amendment, § 3501 contradicts vital principles necessary for the preservation of an accused's 5th Amendment rights. These rights include the right not to be compelled to be a witness against himself, and the assurance of the public generally that the accused is treated fairly in a public trial rather than subjected to an inquisition, and the maintenance of the separation of powers and the federal system of checks and balances.

CONCLUSION

For the foregoing reasons, the court should reverse the 4th Circuit on its ruling that "Congress, pursuant to its power to establish the rules of evidence and procedure in the federal courts, acted well within its authority in enacting 18 U.S.C. § 3501," and hold, rather, that *Miranda* governs the admissibility of confessions in federal court.

Respectfully submitted,

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